

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 36526 of 2004(W)

PETITIONER:

K.P.VENUGOPALAN, AGED 50 YEARS,
S/O. GOPALAKURUP, VIKAS BHAVAN,
VIKKILISSERY, BADAGARA, KOZHIKODE.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:

1. THE DISTRICT COLLECTOR, COLLECTORATE,
KOZHIKODE.
2. REVENUE DIVISIONAL OFFICER,
OFFICE OF THE REVENUE DIVISIONAL OFFICE,
BADAGARA, KOZHIKODE.
3. THE TAHASILDAR, TALUK OFFICE,
BADAGARA.
4. THE DEPUTY TAHASILDAR (RR), BADAGARA.
5. THE VILLAGE OFFICER, CHORODE VILLAGE,
BADAGARA.
6. THE SECRETARY, CHORODE GRAMA
PANCHAYATH, CHORODE, BADAGARA

R1 TO R5 BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE BUILDING TAX PAID BY THE PETITIONER DURING THE YEAR 2002-04

EXT.P2 TRUE COPY OF THE INVITATION CARD

EXT.P3 TRUE COPY OF THE DEMAND SNOTICE ISSUED BY THE THIRD RESPONDENT DATED 2.12.2004

EXT.P4 TRUE COPY OF THE REPRESENTATION DATED 6.12.2004

RESPONDENTS' EXHIBITS;; NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 36526 OF 2004

Dated this the 27th day of November, 2007

JUDGMENT

Petitioner is challenging the demand of luxury tax in respect of his residential building on the ground that the plinth area is below the limit that attracts luxury tax under Section 5A of the Kerala Building Tax Act. Government Pleader submitted that building tax assessed on the same plinth area was paid by the petitioner without dispute. Even though building tax is paid without dispute, petitioner is entitled to contest luxury tax as it is a recurring liability for every year. The plinth area assessed is 306.18 sq. metres which is substantially above the limit that attracts luxury tax. In the normal course, even after excluding the plinth area of the car porch, plinth area is such as to attract luxurys tax. Counsel submitted that a store room where coconuts and firewood are stored is also assessed. If the store room is part of the building, then the plinth area of the said room was rightly included. on the other hand, if the petitioner has constructed a separate room for storing coconuts and firewood, it should not be treated as part of the residential

building. In view of the controversy O.P. is disposed of leaving freedom to the petitioner to measure himself and satisfy about the correctness of the plinth area and if it is found to be 278.7 sq. metres or above, petitioner can remit tax. On the other hand, on re-measurement, if the petitioner finds the plinth area below 278.7 sq. metres, then the Tahsildar will on request from petitioner refer the matter to the Asst. Exe. Engineer, PWD for measurement and on request made by the Tahsildar, the Asst. Exe. Engineer should treat it as a direction from this Court and he will measure the plinth area after notice to the Tahsildar and petitioner. If the plinth area measured by the Asst. Exe. Engineer is found to be above 278.7 sq. metres or above then in addition to the luxury tax, Tahsildar will recover an amount of Rs.5000/- towards cost from the petitioner for raising unnecessary controversy on a simple matter.

(C.N. RAMACHANDRAN NAIR)
Judge

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